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August 16, 2017

ECF & HAND DELIVERY

The Honorable Richard Berman
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007-1312

Re: *United States v. Richard Usher et al.*, 17-CR-19 (RMB)

Dear Judge Berman:

We write this letter in response to Defendants' August 15, 2017 letter requesting leave to file a motion for a bill of particulars ("Letter"). The Government does not oppose Defendants' request for leave, as we informed Defendants yesterday. However, upon reading the letter, we see that Defendants have significantly narrowed the dispute since that time. We respectfully submit that Defendants' motion may be resolved more expeditiously through a court conference rather than full briefing.

The exhibits to Defendants' Letter lay out the short history of this dispute. Defendants originally demanded a broad bill of particulars detailing "all" trades, fixes, decisions to refrain from trading, and communications in furtherance of the conspiracy, as well as an explanation of the "specific method" by which any alleged trading manipulation occurred. In addition, Defendants requested a list of all episodes of alleged conspiratorial trading that the Government intends to rely upon at trial. The Government objected to both parts of this request, citing relevant precedent, and instead gave a bill of particulars specifying only the co-conspirators.

Defendants have now streamlined their request to just one: the "trades, bids, and offers (and the corresponding communications, e.g., call or chatroom passage on that day) the Government intends to rely upon at trial." (See Letter at 4.) If the Court prefers to have full briefing of this issue, the Government will argue that the law forbids Defendants from using a bill of particulars to get a preview of the Government's trial evidence or legal theories. But such briefing may be unnecessary. The Government has already committed to Defendants that it will provide an early trial exhibit list, which will also specify the particular instances of alleged collusive trading and means of communication. In line with typical practice in the Southern District of New York in similar cases, the Government has committed to providing this 60 to 90

days prior to trial. (The *Connolly* case cited by Defendants is not substantially different. The *Connolly* court required the government to provide an initial list of trades at issue a year after arraignment and a substantial period of pretrial discovery, and a final list only after the completion of briefing on dispositive motions and less than four months before trial. *See U.S. v. Connolly*, 2017 WL 2537808, at *3, *7 (S.D.N.Y. May 24, 2017).) The Government gave this commitment to Defendants in writing on August 8, 2017 (see Attachment B to Letter, at 5.)

Thus, the issue that Defendants have placed before the Court is not truly about a bill of particulars. The issue is when the Government should produce a trial evidence list specifying the allegedly collusive trades for the jury. The Government is happy to fully brief that issue before the Court, but also ready to resolve the matter by conference or otherwise at the Court's direction.

Respectfully submitted,



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